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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,158	08/30/2001	David T. Bailey	HAU234	8638

7590

03/09/2004

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EXAMINER

OH, TAYLOR V

ART UNIT	PAPER NUMBER
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1625

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/943,158

Applicant(s)

BAILEY ET AL.

Examiner

Taylor Victor Oh

Art Unit

1625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see pages 2-4.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-9, 11, 14-28, 61-62, 65-66, and 69-72.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2/19/2004.
10. ☐ Other: _____

It is noted that applicants have filed an Amendment after the Final Rejection; applicants' attorney has addressed the issues of record. The proposed amendment will not be entered.

The Status of Claims

Claims 1-9, 11, 14-28, 61-62, and 65-66, and 69-72 are pending.

Claims 1-9, 11, 14-28, 61-62, and 65-66, and 69-72 have been rejected.

Claim Rejections-35 USC 112

1. The rejection of claims 1, 14, and 24 under 35 U.S.C. 112, first paragraph, has been withdrawn due to applicants' convincing argument.

Claim Rejections-35 USC 103

2. The rejection of Claims 1-9, 11, 14-28 under 35 U.S.C. 103(a) as being unpatentable over Gabetta et al (U.S. 5,200,186) in view of S.O.R.I.(GB 1,235,379) is maintained for the reasons of the record on 4/9/2003.

The rejection of Claims 61-62 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levy et al (U.S. 5,780,060) in view of S.O.R.I.(GB 1,235,379) is maintained for the reasons of the record on 4/9/2003.

The rejection of Claims 65-66, 69 and 71-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gabetta et al (U.S. 5,200,186) in view of Langston (U.S. 4,500,556) and S.O.R.I.(GB 1,235,379) is maintained for the reasons of the record on 4/9/2003.

3. The amendment filed 2/4/2004 is refused to enter under 35 U.S.C. 132 because it introduces new matter into claim 1 and to claims 65,69, and 71-72. 35 U.S.C. 132 states that no amendment shall introduce new matter into the claims of the invention. The added material which is not supported by the original claim is as follows: claim 1 has been amended to introduce the phrase “ by a method that excludes the addition of bisulfite ions” which is different than the original process which is the one-column method without the sulfitation step which it, in turn, eliminates the acidification step (see page 11, paragraph 0041, lines 19-21). What the claim means is that any method without adding bisulfite ions can be applied to the claimed invention as filed. A close inspection of the original claim and specification do not provide antecedent basis for the proposed changes. New matter can not be introduced into specification at any time during the prosecution, unless there is a supporting description that would support the proposed changes. Applicant is required to cancel the new matter in the reply to this Office Action.

Allowable Subject Matters

In order for the application to be allowable, there are following limitations to be changed to the claims:

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- in place of the step (a) in Claim 1, the Examiner recommends to add the limitation for (a) "extracting plant or plant parts known to contain anthocyanins with an acidified extraction solvent without adding bisulfite ions to form a crude extract comprising anthocyanins".
- claims 61-62, 65-66, and 69-72 are needed to cancel since they are directed to the product by the process claims, which can be read on the prior art.

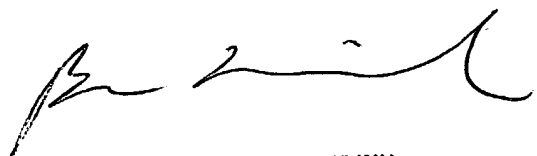
Unless these changes are made to the claims, the prosecution of allowing the application will be delayed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 571-272-0689.

The examiner can normally be reached from 8:30 am-5:00 pm on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Mckane can be reached on 571-272-0699 on 7:00 am-6:00 pm on Monday through Thursday.

Taylor Victor Oh
324104



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PRIMARY EXAMINER
GROUP 1200-1625